

Prepared Statement of the Federal Trade Commission

Presented by Robert Pitofsky
Chairman

Before The

Committee on the Judiciary
United States House of Representatives

June 4, 1997

I. Introduction

Mr. Chairman and members of the Committee, I am pleased to appear before you today to present the testimony of the Federal Trade Commission concerning the important topic of deregulation and competition in the electric power industry.⁽¹⁾ The staff of the Commission has commented to the Federal Energy Regulatory Commission ("FERC") on the importance of wholesale competition⁽²⁾ and on the appropriate analytical framework for evaluating mergers,⁽³⁾ and to states on the importance of introducing competition in the electric power industry.⁽⁴⁾

The FTC is a law enforcement agency with statutory authority over a broad spectrum of the American economy, including the electric power industry. The Commission enforces, among other statutes, the FTC Act⁽⁵⁾ and the Clayton Act,⁽⁶⁾ sharing with the Department of Justice authority under section 7 of the Clayton Act to prohibit mergers or acquisitions that may "substantially lessen competition or tend to create a monopoly."⁽⁷⁾ Section 5 of the FTC Act prohibits "unfair methods of competition" and "unfair or deceptive acts or practices," thus giving the Commission responsibilities in both the antitrust and consumer protection areas.

Electric power is the latest industry in which extensive regulation has been outmoded by time and technology. Regulation has receded in industries such as airlines, telecommunications, railroads, trucking, and banking and financial services. Over the last twenty years, an industry with many structural characteristics similar to electric power, the production and transmission of natural gas, has been largely deregulated. There are lessons to be learned from the successes and difficulties of these deregulatory efforts.

The Commission's statement will focus on some general principles that apply whenever regulated markets are opened to competition and then will discuss the application of those principles to the electric power industry, keeping in mind several characteristics of this industry that may temper the application of competitive forces.

There are huge resources at stake in the shift to a competitive environment. Total industry revenues are estimated at \$200 billion a year. If the levels of cost savings and technological improvements in this industry approach those attained in previously deregulated industries,

consumers will be substantially better off in terms of lower prices and increased choices.⁽⁸⁾ These potential savings and innovations will not appear automatically, however. Ensuring the benefits of competition will require vigorous enforcement of antitrust and consumer protection principles. It is particularly important to establish effective merger enforcement in the early years of deregulation to deal with the reorganization that typically occurs in an industry after regulators lose the power to control terms of entry and consolidation. Many mergers represent a sound response to deregulation; others may be likely to preserve anticompetitive power. If the withdrawal of regulatory power is followed by the accumulation of undesirable private market power, deregulation will fail and consumers will lose.

II. General Principles

Economic theory tells us, and experience confirms, that certain general principles apply whenever a heavily regulated industry is subjected to market forces. We can expect that, to some degree, these same forces will affect the electric power industry as regulatory constraints are peeled away.

First, because industry participants have become used to a regulatory environment, some may attempt to protect or duplicate many of the comfortable aspects of that environment. Where they are accustomed to coordinated interaction and the use of the regulatory process to bar or disadvantage new entry, industry members may attempt to use monopolistic or cartel behavior to protect their entrenched positions after deregulation. A monopolist will not ordinarily welcome new entry, and issues of access or structural realignment designed to promote access will have to be considered with those incentives in mind.

Second, because the transition from regulation to competition is never instantaneous or complete, market participants may find themselves subject to inconsistent requirements. Some participants may become subject to market forces while others remain regulated, or different participants may be subject to different regulatory rules. It may be inefficient and unfair to have different regulatory rules apply to direct competitors. In the electric power industry, for instance, potential anticompetitive behavior may be monitored by FERC, state public utility commissions, or the federal antitrust agencies, depending on the pace and mix of deregulatory efforts. In a deregulatory environment, it is important to equalize treatment by reducing burdens whenever possible, rather than increasing them.

Third, regulatory bodies may have non-competition policy goals that warrant consideration in the transition to a competitive environment. In some regulated industries, for example, universal lifeline service⁽⁹⁾ at low cost is an important public policy goal. Another important policy goal in the electric power industry is environmental protection. Antitrust policy does not incorporate these goals. Some continuing regulation or other special provisions may be necessary to be certain that those policy goals are fully taken into account. Antitrust enforcement seeks to prevent coordinated private firm decisions that can lead to anticompetitive behavior while distinguishing behavior that promotes legitimate goals without harming competition.

The first three principles imply that the antitrust laws will have to be applied flexibly to handle the issues that arise in regulated, or formerly regulated, industries. Regulatory regimes are

usually established in response to some market failure, perceived or actual, that makes market forces inadequate to protect consumers and promote efficiency. Even if a consensus exists that the initial decision to regulate an industry was wrong, or technology obviates the need for regulation, the impact of the regulation on the industry structure, incentives, and expectations requires that the antitrust agencies be especially sensitive in applying antitrust rules while market forces regain primacy.

Applying the antitrust rules with special care does not, however, mean a "hands off" approach. The consumer and efficiency gains from deregulation may be jeopardized without vigorous antitrust enforcement during and after deregulation. The antitrust agencies must ensure that public regulation is replaced by private competition, not private collusion or dominant firm behavior. Here, the antitrust laws' flexibility is a major advantage. Antitrust jurisprudence unfolds on a case-by-case approach, constantly adapting to new learning and new experiences. Where, as here, the deregulated world will be so different from the experience of all industry participants, it is difficult to know in advance what oversight will work best. The difficulty of predicting how the industry will look in the future suggests that fixing government oversight policy in concrete at this stage could be counterproductive. In this type of uncertain environment, flexible antitrust enforcement may be particularly important.

The little first hand experience with deregulation in electric power that is available supports the application of the antitrust laws at each stage of regulatory withdrawal. In Britain, for example, deregulation was accompanied by the sale of the government's monopoly system. The government's conventional (non-nuclear) generating capacity was divided between only two entities, and the resulting duopoly has assertedly been able to raise market prices by withholding capacity.⁽¹⁰⁾ This experience counsels in favor of continuous antitrust scrutiny of a deregulated electric power industry.

III. Application of the Antitrust Laws to the Electric Power Industry

Congress designed the antitrust laws as general enforcement principles applicable to all industries. But the application is not mechanical. Thus, in applying these laws, the Commission is always cognizant that the competitive environment is different in each industry. The electric power industry exhibits its own unique characteristics, and antitrust analysis must take account of the industry as we find it.

A. Regulatory and Structural Background

Until recently, the electric power industry was dominated by vertically integrated monopolies. A retail customer bought electric power from a monopoly supplier that owned or controlled one or more generating plants, one set of transmission wires that moved the power from the generating plants to the local distribution grid, and one local distribution grid that moved the power to the customer.⁽¹¹⁾ The economies of scale in power generation were such that no single long term contract would be sufficient to justify entry, which entailed huge sunk costs and a long lead time. In addition, the complexity of the transmission and distribution system was thought to be such that reliability could not be guaranteed if the generating capacity was supplied by an independent source.⁽¹²⁾

This vertically integrated monopoly system was, and continues to be, regulated at both the state and federal levels. In the states, public utility commissions have substantial power over company operations, including the power to set retail prices and rates of return. At the federal level, FERC regulates the interstate transmission of electricity, including the setting of transmission prices. Under the Federal Power Act, FERC is also required to approve mergers of interstate utility companies, using a public interest standard.⁽¹³⁾ In addition, the antitrust agencies are empowered to enforce the Clayton Act's section 7 prohibition against anticompetitive mergers.⁽¹⁴⁾

In the 1970s and 1980s, a number of factors converged to change the perception of the industry.⁽¹⁵⁾ Congress passed the Public Utility Regulatory Policies Act of 1978 ("PURPA"),⁽¹⁶⁾ which authorized FERC to require utilities to purchase power from qualifying independent producers. Around the same time, new natural gas generation technology, assisted by a decrease in the price of natural gas relative to other fuels, began to make it economically feasible to generate electricity in much smaller plants. This so reduced the minimum efficient scale of power plants that generation of electricity could no longer be considered a natural monopoly. One unintended effect of PURPA was to provide information showing that independent generators would not disrupt the wholesale power grid. By 1994, approximately 8% of U. S. generating capacity was independently owned. In 1992, Congress passed the Energy Policy Act,⁽¹⁷⁾ which authorized FERC to order open access to the wholesale distribution system, which FERC did under Order 888⁽¹⁸⁾ on April 24, 1996.

It is apparent that these changes are only the beginning. A number of states have seized the initiative and moved to increase competition in their local distribution systems, either by requiring open access to the transmission and distribution monopolies within their reach or by establishing independent system operators ("ISOs") to determine access and pricing.⁽¹⁹⁾ Congressional interest also has been sparked. Several options are available for federal legislation. One is to allow the state experiments to continue without federal interference. Some, believing that interstate commerce will be affected by sharpened market forces and that there is the potential for one or more states to impede the introduction of competition, believe that Congress should mandate the boundaries of the deregulatory effort. Bills have been introduced that would limit federal action to repeal of certain federal regulatory schemes such as PURPA and PUHCA, while other bills would mandate comprehensive reform, including open access to the retail grid.

This is a political decision with substantial economic consequences. We do not address the method and scope of regulatory reform, but we believe that strong antitrust oversight of the industry will and should remain vital no matter what course of deregulation is chosen.

B. Competitive Issues--Vertical and Horizontal

Market power can be accumulated or abused through both vertical and horizontal arrangements. These potential abuses are not unique to the electric power industry, but the structure and history of the industry suggest certain areas will require enhanced scrutiny.

The vertical relationships in this industry are different from those in almost all other industries. The industry has been almost completely integrated for many years. The important issue this industry structure raises is not how to prevent anticompetitive consolidation, but how to ensure

that the benefits of new competition occurring in power generation reach the consumer. A key to effective competition is to provide open access⁽²⁰⁾ for independent generators to vertically integrated transmission and distribution systems so that lower prices in generation are passed on to consumers. One possibility, of course, would be through divestiture of the vertically integrated companies. However, large scale forced divestiture could prove costly in terms of complex legal liability issues for existing contracts and the sacrifice of potentially important economies of scope and vertical integration.⁽²¹⁾ The method chosen by both the states and FERC to assure open access and efficient pricing in the transmission and distribution grids is to unbundle and make transparent the pricing decisions of the vertically integrated firms.⁽²²⁾ If correctly done, this unbundling should prevent a monopolist from discriminating against independent power generators and from shifting costs to the regulated portion of its business.⁽²³⁾

Two methods of unbundling currently are being used by regulators in the electric power industry. For wholesale sales of interstate transmission of electricity, FERC requires "functional" unbundling, whereby it orders a transmission monopolist to grant open access and charge the same prices to independent generators that it charges internally to its own generator plants. A number of states, on the other hand, have opted for what the FTC staff has termed "operational" unbundling, in which an independent system operator is established to operate the transmission and distribution grids to insure open access and transparent pricing while the monopolist retains ownership of the physical assets.⁽²⁴⁾ The operational unbundling plan may work to preserve economies of vertical integration, internalize loop flow externalities, and assure transparent investment signals for potential investors⁽²⁵⁾ while eliminating the strategic opportunities of the monopolist to favor subtly its own generating capacity.⁽²⁶⁾

In terms of horizontal antitrust scrutiny of the electric power industry, open access will not eliminate the need to guard against anticompetitive conduct, either through merger or through other means. Bottlenecks in transmission and distribution and loop flow problems could give rise to market power exercised unilaterally or through agreement among competitors. Mergers between generating firms may create market power that could be exercised by withholding capacity in order to drive up rates, as the British experience may indicate. Mergers at the retail level, between electric utilities or between electric utilities and independent retail marketers, could harm existing or potential competition.

Following deregulation, horizontal mergers are more likely than vertical mergers in the electric power industry, given the current high level of vertical integration. Merger analysis is not industry specific; it is designed to apply across all industries. Nonetheless, this industry, like all industries, has certain unique features that would require that the analysis be applied in a flexible manner. Using the analysis described in the Horizontal Merger Guidelines, jointly developed by the Commission and the Department of Justice,⁽²⁷⁾ the enforcement agencies assess whether the proposed transaction would harm consumers of any relevant product through increased prices or lower product quantity, quality or service levels, or reduced technological innovation.

Defining the relevant product and geographic markets is the first step in determining where any potential anticompetitive effects will be felt. A relevant product market is one in which many consumers of the product would not switch to an alternative product if the price of the first product were increased by a small, but significant amount.⁽²⁸⁾ Similarly, a relevant geographic

market comprises the locations of all of the alternative suppliers to which customers would likely turn if prices rose in the relevant product market.

In many industries, the more distinctive and important inquiry concerns the relevant product market, where the consumers' substitutes are determined. In the electric power industry, both product and geographic markets may prove difficult to define with absolute precision. Product markets will need to be defined, taking into account time, reliability, and interruptibility. The more difficult issue in this industry may be defining the relevant geographic market. As open access to the transmission and distribution grids becomes the norm, consumers will be able to turn to ever more distant sources of electricity. The geographic market may be national, or perhaps even international if Canadian and Mexican generators become tied into the U. S. grids. But establishing the relevant markets may be more complicated because the elements of defining the product market also change the scope of the geographic market. Electricity cannot be stored in any measurable quantities; it must be generated as it is consumed. Also, demand varies substantially not only seasonally but by time of day. Thus, the substitute sellers of electricity to any given consumer may be a number of firms offering subtly different products. Some consumers may want guaranteed reliability, while others may opt for interruptible power at lower prices. Some consumers may choose to defer power consumption to off-peak hours in return for lower prices. Each of these consumer decisions affects the definition of the relevant product market and may affect the number of potential suppliers in that market.

Once markets have been determined, the participants and their market shares must be identified. A market that is divided evenly among many participants will rarely have the potential for abuse of market power.⁽²⁹⁾ The Merger Guidelines use a measure of market share distribution called the Herfindahl-Hirschman Index to determine the relative concentration of firms in the industry. In this industry, as in others, antitrust analysis goes significantly beyond the mere calculation of market shares. Certain economic characteristics may make this industry susceptible to cartel behavior at a level of concentration different from the point at which we would otherwise be concerned. A careful and thorough analysis of each transaction must therefore be undertaken once the relevant markets and market shares have been determined. If experience suggests that this industry is particularly subject to cartel behavior, or that mergers indirectly promote cartel behavior, then threshold levels of concern indicated by market shares may need to be adjusted.

Entry and efficiencies are factors that are given considerable emphasis in the Guidelines. If entry into a market is easy, post-merger market participants likely will be unable profitably to increase prices above the pre-merger level. Entry analysis in the electric power industry poses a number of difficulties. The size of an efficient generating plant has decreased significantly but it still may take longer than the Guidelines benchmark of two years to enter at that level. Siting and environmental problems may complicate and delay entry at any level. Excess capacity and the decommissioning costs of nuclear power plants are important factors to consider. The ease of entry in this industry may vary from case to case as relevant markets change. For instance, available sites for new building may be more abundant in some areas than in others, making entry quicker and less costly.

The potential for anticompetitive effects does not end the inquiry in a typical merger investigation. Where the potential for anticompetitive effects is a close question, the potential

efficiencies generated by the merger must be considered. Cognizable efficiencies may include economies of scale, integration of production facilities, plant specialization, and lower transportation costs.

The antitrust agencies have long considered efficiencies as relevant to the exercise of their prosecutorial discretion when deciding whether to challenge a transaction. In a close case, an agency may refrain from challenging a merger if it appears that the merger would generate substantial efficiencies. After a series of Commission hearings on Competition Policy in the New High-Tech, Global Marketplace indicated concern with how the antitrust agencies consider efficiencies in evaluating mergers, the Commission and the Department of Justice recently published a revised efficiency section for the Guidelines.⁽³⁰⁾

Efficiencies may have particular significance for the electric power industry. In an industry that has been pervasively regulated for many years, efficiencies are likely to play an enhanced role in motivating restructuring after deregulation. Where capital mobility was once circumscribed by regulators, firms will now be able to pursue the most efficient, market-determined structure. For instance, independent generators that have acted as maverick firms may be able to acquire additional capacity quickly, thus enhancing their ability and incentive to lower prices. Firms with an inefficient mix of generating plants for their markets (e. g., more low cost coal fired plants and fewer flexible natural gas fired plants in a market with highly volatile time of day demand peaks) may be able to adjust their capacity to the demand.

C. Consumer Protection Issues

The Federal Trade Commission is the only agency with statutory mandates in both antitrust and consumer protection enforcement and is the only federal agency with general jurisdiction in the area of consumer protection. Effective consumer protection will be important in the electric power industry after deregulation. Choosing an electricity supplier will be a novel experience for most consumers, who may find it difficult to understand the ramifications of their choice of power supplier. The Commission has substantial experience with consumer information disclosures, in such diverse areas as energy efficiency information for major home appliances, octane ratings for gasoline, gas mileage information for automobiles, price and other information with respect to 900-number telephone lines, and loan interest rate information in the form of annual percentage rates.

The Commission has already begun efforts to protect electric power customers. The Commission is participating in an interagency task force established by the Department of Energy to explore consumer information issues arising from the restructuring of the electric power industry.⁽³¹⁾ In particular, the task force is addressing issues associated with providing consumers with reliable information on energy sources. One of the principal concerns that has already arisen with respect to consumer information disclosure is the "green marketing" of electricity, that is, marketing electricity generated by environmentally friendly methods. Because electricity is purchased by virtually all Americans, it will be important for marketers to convey environmental information in a way that consumers can understand, yet that is not so vague and general as to be deceptive through providing insufficient information. The Commission has issued Guides for the Use of Environmental Marketing Claims⁽³²⁾ that will help provide guidance to electricity marketers on

how to promote the environmental features of their product without misleading consumers. In addition, the requirement of section 5 of the Federal Trade Commission Act that marketing claims be truthful and substantiated will apply to claims made in the marketing of electricity.

It may be very difficult to evaluate the types of environmental claims that are likely to be made in promotional materials for electricity. These claims might include such features as the fuel mix of a power seller (e.g., coal, nuclear, renewable resources) and the emissions associated with the generation (e.g., carbon dioxide, nitrous oxides, sulfur dioxide). When even technical experts do not agree on what is more important to the environment, it will be difficult to convey this information to consumers so that they can make a meaningful choice. Thus, effective consumer education and enforcement of the law against unfair or deceptive acts or practices will be important.

IV. Conclusion

Deregulation in a number of industries has proven to be beneficial to consumers and the competitive process. The deregulated industries exhibit lower prices, increased quality and quantity of goods and services, and heightened innovation. The electric power industry is on the verge of substantial deregulation. While it is unclear whether that process will be driven by the states or by the federal government, the outcome in either case should be that market forces will have an effect on firms long accustomed to the slower pace of regulated life.

The potential for consumer savings and increased choice is enormous, but it is certainly not guaranteed. Vigilant antitrust enforcement is an essential component of a market economy, especially in the formative years after the regulatory grasp is loosened. In particular, strong merger enforcement is necessary to ensure that the inevitable restructuring does not result in the accumulation and abuse of private market power. The Commission stands ready to provide this enforcement to protect the consumer gains that should follow the introduction of market forces to the electric power industry.

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1. This written statement represents the views of the Federal Trade Commission. My oral presentation and response to questions are my own, and do not necessarily represent the views of the Commission or any other Commissioner.
 2. *See* Comment of the Staff of the Bureau of Economics, Federal Trade Commission, "Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities," Dkt. No. RM96-6-000 (Aug. 7, 1995) ("BE/FERC I").
 3. *See* Comment of the Staff of the Bureau of Economics, Federal Trade Commission, "Inquiry Concerning Commission's Merger Policy Under the Federal Power Act," Dkt. Nos. RM95-8-000 and RM94-7-001 (May 7, 1996) ("BE/FERC II").
 4. *See* Comment of the Staff of the Bureau of Economics of the Federal Trade Commission to the South Carolina Legislative Audit Council on The Statutes and Regulations Covering the South Carolina Public Service Commission (Feb. 28, 1994); Letter to The Honorable Kim Malcolm, Administrative Law Judge, Public Utilities Commission of the State of California, from Ronald S. Bond, Acting Director of the Bureau of Economics, Federal Trade Commission, enclosing South Carolina Comment (June 8, 1994).

5. 15 U.S.C. 41-58.

6. 15 U.S.C. 12-27.

7. 15 U.S.C. 18.

8. *See* R. Crandall and J. Ellig, *Economic Deregulation and Customer Choice: Lessons for the Electric Industry*, Center for Market Processes at 2-3 (1996) (within 10 years of substantial deregulation, prices in the natural gas, long distance telecommunications, airlines, trucking, and railroad industries decreased between 25 and 50 percent while quality of service improved).

9. In the electric power and telephone industries, for instance, regulatory agencies require providers to offer basic, low-cost service that may be subsidized by consumers who purchase additional services.

10. Green, R. J. and Newbery, D., "Competition in the British Electricity Spot Market," 100 *J. Pol. Econ.* 929 (1995). *See also* Alex Henney, "The Mega-NOPR: A Brit Crosses the Pond to Explain What's Happening at FERC," *Pub. Utils. Fort.*, July 1, 1995 at 29; "U.K.'s National Power, Powergen Must Sell Off Up to 6000 MW, Lower Rates," *Elec. Util. Wk.*, Feb. 21, 1994.

11. There also are a number of municipally owned power companies in the United States that buy wholesale power under contract.

12. The problem of reliability in the transmission of electrical power is complicated by a "loop flow" technical problem. Due to the physical laws that govern the flow of electricity, decisions made in one area of the transmission grid will affect capacity, reliability, and costs in other areas of the grid. Thus, the interconnection of any vertically integrated system with any outside source of generation or transmission will require some entity to monitor the entire grid to prevent outages and physical damage to equipment.

13. Under section 203 of the Federal Power Act, 16 U.S.C. 824b, FERC authorization is required for mergers of public utilities subject to its jurisdiction. Any electric utility that is owned by a holding company is regulated by the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C. 79-79z-6. Approximately 20 percent of U. S. electric utility assets are currently held by entities subject to PUHCA.

14. Unlike the banking, communications and transportation common carrier, and air carrier industries, section 11 of the Clayton Act does not entrust enforcement of the Clayton Act with respect to the electric utility industry to the regulatory agency for the industry (FERC), but rather to the FTC. The Department of Justice also has enforcement authority concerning these mergers under section 15 of the Clayton Act.

15. For a short history of recent technological and public policy changes in the electric power industry, *see* *The Economic Report of the President* at 181-89 (Feb. 1996) and 197-200, 205-208 (Feb. 1997). *See also* Pierce, "Antitrust Policy in the New Electricity Industry," 17 *Energy L.J.* 29 (1996).

16. 16 U.S.C. 2601-2645. PURPA was intended to deregulate some aspects of electric utilities and to encourage new sources of domestic power generation.

17. 42 U.S.C. 13201-13556.

18. Dkt. RM958-000.

19. *See* California Assembly Bill 1890 (1996); California Public Utilities Commission, Proposed Policy Decision, Dkts. R.94-04-031 and I.94-04-032 (May 24, 1995).

20. Open access refers to the principle that a monopoly owner of transmission or distribution assets must make them available to independent generators at price and service levels equal to those provided to its owned generators. FERC has focused on behavioral rules for open access and on developing mandatory common information sources concerning supply and transmission conditions. *See* BE/FERC I at 15-16.

21. A number of utilities have followed a path of voluntary divestiture in order to compete more effectively in the deregulated climate. *See* Comments of Pacific Gas and Electric Company on Divestiture of Generation Facilities, "Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation," Dkt. No. R.94-04-031 (Mar. 19, 1996).

22. *See* FERC Order 888, *supra* note 18.

23. Brennan, "Cross Subsidization and Cost Misallocation by Regulated Monopolists," 2 J. Reg. Econ. 37 (1990).

24. *See* BE/FERC I at 3.

25. Operation of a transmission system by an independent system operator should assist investors in distinguishing between high transmission prices caused by physical bottlenecks at peak demand periods and high prices caused by the exercise of market power.

26. Because supply and demand for electricity are so time-sensitive, even the slightest delay in transmission can have serious impact on the reliability of any generator. A regulatory agency might find it very difficult to implement functional unbundling because of the difficulty of monitoring the numerous individual transactions nationwide to prevent degradations of contracts between independent generators and wholesale purchasers. *See* BE/FERC I at 5-9.

27. U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, 4 Trade Reg. Rep. (CCH) 13,104 (Apr. 2, 1992), *as amended*, April 8, 1997. Recently, FERC announced that it would follow the principles in the Guidelines in its own analysis of utility consolidations. *See* Inquiry Concerning the Commission's Merger Policy under the Federal Power Act, RM96-6-000, 61 Fed. Reg. 68,595 (Dec. 18, 1996).

28. Specifically, the markets are defined by asking whether a hypothetical monopolist could raise prices by a "small but significant and nontransitory" amount, such that not enough buyers would switch to alternatives to make the price increases unprofitable. If the price increases would not be profitable, the relevant market is too narrowly defined. *See* Merger Guidelines 1.11.

29. Other things being equal, an acquiring firm will find it more difficult to engage in anticompetitive conduct, either unilaterally or in conjunction with others, in an unconcentrated than in a concentrated market. *See* Merger Guidelines 2.0.

30. Federal Trade Commission and Department of Justice, Revised Section 4 of the Horizontal Merger Guidelines (Apr. 8, 1997).

31. The task force consists of representatives from the Department of Energy, the Environmental Protection Agency, the Federal Trade Commission, the Federal Energy Regulatory Commission, the Food and Drug Administration, and the Energy Information Administration, which is part of the Department of Energy.

32. 16 C.F.R. Part 260 (1996).